Supreme Court, U.S.
FILED
JUN 8 1995
OFFICE OF THE CLERK

(2)

No. 94-1770

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

MELODY DAVILA, *et al*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al*,

Respondents.

PETITION FOR A WRIT OF
CERTIORARI TO THE SUPREME COURT
FOR THE STATE OF CALIFORNIA

SUPPLEMENTAL APPENDIX

HUGH R. MANES, *Counsel of Record*
CAROL A. WATSON
MANES & WATSON
Attorneys for Petitioner
3600 Wilshire Boulevard
Suite 1710
Los Angeles, California 90010
(213) 381-7793

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1994

MELODY DAVILA, *et al*,

Petitioners,

vs.

COUNTY OF LOS ANGELES, *et al*,

Respondents.

Petitioners respectfully submit this Supplemental Appendix to replace the Appendix B attached to their Petition.

Hugh R. Manes, *Counsel of Record*
Carol A. Watson
Manes & Watson
Attorneys for petitioners

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

MELODY DAVILA et al.,	B079467
	(Super.Ct.No. VC002724)
Plaintiffs and Appellants,	
v.	
COUNTY OF LOS ANGELES et al.,	
Defendants and Respondents.	

COURT OF APPEAL - SECOND DIST.
FILED
OCT 11 1994
JOSEPH A. LANE Clerk
Deputy Clerk

APPEAL from an order of the Superior Court of Los Angeles County, Daniel S. Pratt, Judge. Affirmed.

Manes & Watson and Carol A. Watson for Plaintiffs and Appellants.

DeWitt W. Clinton, County Counsel, Law Offices of Anthony P. Serritella, Anthony P. Serritella, and Nohemi G. Ferguson for Defendants and Respondents.

Melody, Jo Ann, Carmen and Greg Davila ("plaintiffs"), the spouse, daughter and parents of Henry Davila ("Decedent"), appeal from the order of dismissal entered following the sustaining of a demurrer to their second amended complaint. We affirm.

STANDARD OF REVIEW

"In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.]" (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.)

However, where leave to amend has been granted and the plaintiff declines to file an amended complaint, it is presumed that the plaintiff has pleaded the case as favorably as possible, and all ambiguities in the pleading will be construed against the plaintiff. (Truta v. Avis Rent A Car System, Inc. (1987) 193 Cal.App.3d 802, 816.)

BACKGROUND

On March 19, 1993, plaintiffs filed a second amended complaint against the County of Los Angeles and three of its deputy sheriffs, Michael Rodriguez, Michael DiMarzo, and Jeffrey Lammers (collectively "defendants"). Therein, plaintiffs alleged that, on March 19, 1990, defendants were called to the Motel 6 where decedent had been residing. Plaintiffs further asserted that "decedent was arrested and detained and imprisoned by defendants for public intoxication on the grounds that he was so intoxicated that he was unable to care for his own safety or the safety of others." The deputies handcuffed decedent and placed him in their patrol car. The deputies drove decedent to the City of Whittier, where they released him. After the deputies left, decedent walked into the street and was struck and killed by a passing automobile. Plaintiffs alleged causes of action for wrongful death against all defendants and violations of decedent's and plaintiffs' civil rights (41 U.S.C. § 1983) against the individual defendants.

On May 3, 1993, defendants demurred to the wrongful death cause of action on the grounds, inter alia, that defendants did not owe a duty of care to decedent and that defendants were immune from liability. with regard to the causes of action for violation of civil rights, defendants claimed, in part, that plaintiffs failed to plead sufficient facts to allege conduct more egregious than mere negligence.

On May 27, 1993, the trial court sustained defendants' demurrer with leave to amend. When plaintiffs failed to file an amended complaint within the allotted time, defendants obtained an order of dismissal pursuant to Code of Civil Procedure section 581, subdivision (f)(2).

ISSUES

On appeal, plaintiffs assert that the trial court erred in sustaining defendants' demurrer since they have sufficiently pleaded causes of action for wrongful death and violations of civil rights. Specifically, with regard to the cause of action for wrongful death, plaintiffs claim that defendants owed a duty of care to decedent and defendants' conduct falls outside the parameters of the statutory immunities. With regard to the causes of action for violations of civil rights, plaintiffs argue that the facts pleaded demonstrated that the individual defendants acted with "deliberate indifference" toward decedent's safety.

DISCUSSION

1. Wrongful Death

Plaintiffs assert that the issue of whether a special relationship, and hence a duty of care, is created when someone is arrested is one of first impression. Defendants, on the other hand claim that "Government Code § 846 has been upheld in several cases involving a question of duty to an intoxicated person who was injured after he/she was arrested and thereafter released, or to the victims of such intoxicated persons."[1] However, none of the cases cited by defendants specifically analyzed the issue of duty under circumstances where the intoxicated person is handcuffed and taken into custody.[2] In

---

[1] Government Code section 846 provides: "Neither a public entity nor a public employee is liable for injury caused by the failure to make an arrest or by the failure to retain an arrested person in custody."

[2] In Stout v. City of Porterville (1983) 148 Cal.App.3d 937, a police officer detained the plaintiff and inquired about his sobriety. The officer did not arrest the plaintiff, who was later struck by a passing vehicle. The Stout court held that no special relationship or duty was created merely by the detention or by the officer's inquiries concerning the plaintiff's sobriety.

In Harris v. Smith (1984) 157 Cal.App.3d 100, a police officer stopped a car for speeding. Detecting alcohol on the breath of the driver, the officer administered three field sobriety tests, which the driver passed. Believing that he did not have probable cause to arrest the driver, the officer let him go. Twenty minutes later, the driver struck the plaintiff's vehicle. The Harris court held that no duty was owed, noting that the officer "did not create the peril to plaintiff; he took no affirmative action which

fact, the closest case is Duarte v. City of San Jose (1980) 100 Cal.App.3d 648. There, a police officer arrested a person for driving while intoxicated. The arrestee was placed in the patrol car but was not handcuffed. When the officer left the patrol car unattended, the arrestee ran off the road and struck the plaintiff. The Duarte court found that a duty of care existed toward the plaintiff based on the officer's duty to operate his vehicle with due care.

It is obvious from our reading of the cases that there is not definitive precedent on the issue of duty under the circumstances of the instant case. However, under the facts as

---

contributed to, increased or changed the risk that otherwise existed; he did not voluntarily assume any responsibility to protect plaintiff; and he made no statement or promise to induce plaintiff's reliance. Assuming, arguendo, plaintiff or any other member of the motoring public was a reasonably foreseeable victim, that fact alone is not enough to establish a special relationship with [the officer] imposing on him a duty to use due care. [Citation.]" (Id. at p. 105)

In Truong v. James (1985) 168 Cal.App.3d 833, the plaintiff, while intoxicated, drove his car into the center divider of a freeway. The California Highway Patrol officers who investigated the accident told a tow truck operator to drive the plaintiff home and, should plaintiff become belligerent, to order him out of the truck. After the plaintiff became unmanageable, the tow truck operator ordered him out of the truck. The plaintiff ran into traffic and was struck by three vehicles. The Truong court held that the officers did not order the plaintiff to do anything and his decision to enter traffic "was not a peril created by the officers, i.e., it was due solely to his voluntarily intoxicated condition." (Id. at p. 835)

pleaded by plaintiffs, we conclude that a duty of care was owed to decedent at least for the period that he was handcuffed in the patrol car. We therefore turn to the issue of whether, once decedent was released from custody, the governmental immunity statutes operated to shield defendants from liability.[3]

As noted, Government Code section 846 provides: "Neither a public entity nor a public employee is liable for injury caused by the failure to make an arrest or by the failure to retain an arrested person in custody."

Penal Code section 647 provides, in pertinent part: "Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

" . . . . . .

"(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the

---

[3] Although the trial court rendered its ruling on the basis of duty, rather than immunity, "[w]hen a plaintiff elects not to amend a complaint after a demurrer has been sustained with leave to amend, if the complaint is objectionable on any ground raised by the demurrer, the judgment of dismissal must be affirmed. [Citations.]" (Hooper v. Deukmejian (1981) 122 Cal.App.3d 987, 994.)

influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

"(ff) When a person has violated subdivision (f) of this section, a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody."

Penal Code section 849, subdivision (b), states: "Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:

" . . . . . .

"(2) The person arrested was arrested for intoxication only, and no further proceedings are desirable."

Finally, Government Code section 820.2 states: "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused."

It is clear from the facts alleged in plaintiffs' second amended complaint that decedent was arrested pursuant to Penal Code section 647, subdivision (f), and later released pursuant to the discretion which is vested in police officers by Penal Code section 849, subdivision (b). This case falls squarely

within the immunity statutes quoted above. Moreover, decedent's injuries were sustained as a result of his voluntarily intoxicated state, not because the officers released him. (Truong v. James, supra, 168 Cal.App.3d at p. 835.)

Accordingly, we conclude the trial court properly sustained defendants' demurrer to the cause of action for wrongful death.

2. Civil Rights Violations

In the second amended complaint, after restating the factual allegations underlying the wrongful death cause of action, plaintiffs alleged that decedent's and plaintiffs' civil rights were violated by the individual defendants. Plaintiffs asserted that the individual defendants acted "knowingly, intentionally and with reckless disregard of and deliberate indifference to the rights of decedent, including his right to life . . . ."

"'To state a claim under [42 U.S.C.] § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.' [Citation.]" (Bullock v. City and County of San Francisco (1990) 221 Cal.App.3d 1072, 1088.) California courts apply federal law in determining whether a plaintiff has sufficiently pleaded a civil rights violation. (Ibid.) Although federal law mandates that complaints be construed liberally

(ibid.), merely conclusional allegations are insufficient. (Bach v. County of Butte (1983) 147 Cal.App.3d 554, 564.)

In the second amended complaint, plaintiffs merely have pleaded that the individual defendants acted with deliberate indifference toward decedent's life. Plaintiffs have not complied with the factual specificity required by the courts in a civil rights action. (See Newton v. County of Napa (1990) 217 Cal.App.3d 1551, 1563, and federal cases cited therein.) Since plaintiffs have declined the opportunity to amend the complaint, we must assume that they have pleaded the action as favorably as possible. (Truta v. Avis Rent A Car System, Inc., supra, 193 Cal.App.3d at p. 816.)

Accordingly, we conclude that the trial court properly sustained the individual defendants' demurrer to these causes of action.

DISPOSITION

The order of dismissal is affirmed.

NOT TO BE PUBLISHED.

MASTERSON, J.

We concur:

ORTEGA, Acting P. J. VOGEL (Miriam A.), J.